

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 107 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE A.R.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO

of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO
1 to 5 No

COMMISSIONER OF INCOME-TAX

Versus

SILVER COTTON MILLS CO. LTD.

Appearance:

MR BB NAIK for MR MANISH R BHATT for Petitioner
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE A.R.DAVE

Date of decision: 12/01/2001

JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

At the instance of the revenue, the following question of law arising out of the order passed in Income Tax Application No. 1765/Ahd/1983 by the Income Tax Appellate Tribunal, Ahmedabad Bench 'B' has been referred to this court, for its opinion, under the provisions of sec. 256(1) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

"Whether, on the facts and in the circumstances of the case, the Tribunal has been right in law in holding that the provisions of section 41(1) of the Income-tax Act, 1961 were not attracted in respect of the excess provision for bonus amounting to Rs. 54,745/written off by the assessee during the year in question?"

2. Learned Advocate Shri B.B. Naik has appeared for the revenue and, though served, nobody has appeared for the respondent assessee. In the circumstances, looking to the importance of the issues involved in this Reference Application, learned advocate Shri J.P. Shah has been appointed to assist the court as Amicus Curiae.

3. The facts giving rise to the present reference are as under :

3.1 For the Assessment Year 1979-80, the assessee had written back a sum of Rs. 54,746/-, which was debited as expenditure towards bonus payable to the workmen in the past. The Assessing Officer added the said amount to the profit of the assessee under the provisions of sec. 41(1) of the Act on the ground that the amount which was written back was, in fact, excess provision of bonus which was provided for in the earlier years and, as liability for the said years had already been met with, the amount of Rs. 56,348/- was treated as profits chargeable under sec. 41(1) of the Act. Being aggrieved by the said addition the assessee had preferred an appeal before the CIT (Appeals). The CIT (Appeals) came to the conclusion that the action of the Assessing Officer with regard to addition of Rs. 54,746/- was correct and, therefore, the appeal was dismissed so far as contention with regard to addition of the said amount under the provisions of sec. 41(1) of the Act was concerned.

3.2 Being aggrieved by the order passed in appeal by

the CIT (Appeals), the assessee had approached the Tribunal. The Tribunal deleted the addition on the ground that the assessee could not have unilaterally written off its liability and by merely making entries in the books of account, there was no cessation of the liability within the meaning of sec. 41(1) of the Act. As the liability had not ceased, the Tribunal held that the addition of the amount in question in income of the assessee for the Assessment Year 1979-80 was not justified and, therefore, the said addition had been deleted by the Tribunal.

4. In the facts stated hereinabove, this Court has to opine whether the excess provision of bonus amounting to Rs. 54,746/- could have been added in the income of the assessee during the relevant Assessment Year.

5. Section 41(1) of the Act at the relevant time read as under :

"Where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee, and subsequently during any previous year the assessee has obtained, whether in cash or in any other manner whatsoever, any amount in respect of such loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof, the amount obtained by him or the value of benefit accruing to him, shall be deemed to be profits and gains of business or profession and accordingly chargeable to income-tax as the income of that previous year, whether the business or profession in respect of which the allowance or deduction has been made is in existence in that year or not."

6. We have heard learned advocate Shri B.B. Naik for the revenue and learned advocate Shri J.P. Shah as Amicus Curiae for the assessee.

7. Learned Advocate Shri BB Naik appearing for the revenue has submitted that looking to the provisions of sec. 41(1) of the Act, The Assessing Officer had rightly added Rs. 54,746/- to the income of the assessee in the A.Y. 1979-80 as the amount was in fact an excess provision of bonus. It has been submitted by him that the assessee was unable to give the details with regard to the persons to whom the said amount of bonus was to be

paid. According to him, as the amount of bonus had already been paid to the concerned workmen during the relevant years, there was no liability with regard to payment of bonus by the assessee and, therefore, there was cessation of the liability as the concerned workmen were not to be paid the said amount. Moreover, it has also been submitted that the liability had also ceased on account of the Law of Limitation, especially when no workman had made any claim for the amount of bonus. In the circumstances, it has been submitted by learned advocate Shri Naik that in view of the provisions of sec. 41(1) of the Act, the Assessing Officer had rightly added the said amount to the income of the assessee and even the CIT (Appeals) had rightly confirmed the addition made by the Assessing Officer.

8. On the other hand, learned advocate Shri J.P. Shah appearing as an Amicus Curiae has submitted that upon correct reading of sec. 41(1) of the Act, and in view of catena of judgments delivered by different High Courts and by the Hon'ble Supreme Court, there was no justification in addition of Rs. 54,746/- in the income of the assessee for the Assessment Year 1979-80. It has been submitted by him that upon perusal of the provisions of sec. 41(1) of the Act, it is very clear that the condition precedent for such an addition is that the liability with respect to the amount which is to be added must come to an end. It has been submitted by the learned advocate that, in fact, the liability had not come to an end merely because it was not open to the concerned workmen to have legal recourse for the purpose of recovering the amount of bonus.

9. Learned Advocate Shri J.P. Shah has thereafter submitted that so as to add any amount in the profits of the assessee under the provisions of sec. 41(1) of the Act, there must be remission of the debt by the creditor or there should be a cessation of the liability and thereby benefit should accrue to the assessee. According to the learned advocate, there was no remission of the liability because the concerned workmen to whom the amount of bonus was to be paid had not waived their right to get the bonus either expressly or impliedly. Moreover, there was no cessation of liability. He has made a distinction between cessation of liability and right being barred under the provisions of the Limitation Act. In the instant case, it has been submitted by the learned advocate that even if it might not be open to the concerned workmen to have legal recourse for recovery of the amount which had become due to the concerned workmen before 3 years, the liability still remains. According

to him, a scrupulous employer or a puritanical debtor would never raise a plea with regard of limitation in the matter of discharge of his debt even if the debt is barred by the Law of Limitation. Thus, he has submitted that as there was neither remission of the liability by the concerned workmen nor was there cessation of liability and, therefore, the provisions of sec.41(1) of the Act could not have been invoked by the Assessing Officer for the purpose of adding the said amount.

10. In the course of arguments, the following judgments have been relied upon by the learned advocates :

1. CIT v. Eastern Spinning Mills & Industries Ltd., 207 ITR 951.
2. CIT v. Agarpara Co. Ltd., 158 ITR 78.
3. Express Newspapers Pvt. Ltd. v. CIT, 227 ITR 325.
4. Kesoram Industries & Cotton Mills Ltd. v. CIT, 196 ITR 845.
5. Kohinoor Mills Co. Ltd. v. CIT, 49 ITR 578.
6. Ambica Mills Ltd. v. CIT, 54 ITR 167
7. CIT v. Sugauli Sugar Works (P.) Ltd., 236 ITR 518.
8. J.K. Chemicals Ltd. v. CIT, 62 ITR 34

12. After hearing the concerned advocates and upon perusal of the judgments referred to hereinabove, we are of the opinion that it was not open to the Assessing Officer to add the amount of Rs. 54,746/- to the income of the assessee under the provisions of sec. 41(1) of the Act.

13. Upon perusal of the provisions of sec. 41(1) of the Act, it is very clear that for the purpose of adding any amount in a case like the one which is on hand, there should be either remission of the liability by the concerned creditor so that the liability with regard to making payment comes to an end or there should be cessation of liability.

14. In the instant case, it is very clear that the creditors, namely, the workmen, who were to be paid bonus for the earlier years had not executed any writing for

remission of the liability. There is nothing on record to show that the workmen had waived their right to get the bonus from the assessee. The liability of the assessee had not come to an end otherwise also. Thus, there was no cessation of liability. Simply because the period of limitation had come to an end for the purpose of filing a suit for recovery of the said amount or for taking appropriate action against the assessee, it cannot be said that there was a cessation of liability. The liability still remains, though it may not be enforceable at law on account of the provisions of the Law of Limitation.

15. If one looks at the legal position as depicted in the judgments referred to hereinabove, it is very clear that in a case where the revenue wants to add any income under the provisions of sec. 41(1) of the Act, there must be cessation of liability.

16. The case of Kohinoor Mills Co. Ltd. (supra) shows that in a case like the one which is on hand, the liability still subsists. Ratio laid down in the case of Bombay Dyeing & Mfg. Co. Ltd. v. State of Bombay reported in (1958) S.C.R. 1122 also supports the assessee. Similar view was taken in case of J.K. Chemicals Ltd. (supra) and Agarpara Co. Ltd. (supra).

17. Similar view has been taken by the Hon'ble Supreme Court in the case of Sagauli Sugar Works (supra). It has been observed by the Hon'ble Supreme Court that unless there is a cessation of liability, income cannot be added as per the provisions of sec. 41(1) of the Act. The case on hand can be very well compared with the case decided by the Hon'ble Supreme Court in Sagauli Sugar Works (supra).

18. Looking to the law laid down by the Hon'ble Supreme Court and other High Courts, it is very clear that unless there is a cessation of liability or there is a remission of liability by the creditor, the liability subsists and, therefore, even if entries are made to write back the expenditure, the amount so written back cannot be added in the income of the assessee as per the provisions of sec. 41(1) of the Act.

19. In view of the facts stated hereinabove, we are of the opinion that the Tribunal was absolutely right when it directed the Assessing Officer to delete the addition made under the provisions of sec. 41(1) of the Act and, therefore, we answer the question in the affirmative, that is, against the revenue and in favour

of the assessee.

The reference stands disposed of with no order as to costs.

(D.M. Dharmadhikari, C.J.)

(A.R. Dave, J.)
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